

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

February 9, 2005 Hearing Room 357

8:30 AM Tapes 13 - 14

Corrected 10/12/05

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

HB 2370 Public Hearing

Rep. Alan Brown, House District 10

Michele Longo Eder, Citizen

Ginny Goblirsch, Newport Fishermen's Wives Association

Glenn Chastain, Oregon State Police

Karen Gunson, State Medical Examiner

Warren Deras, Attorney

HB 2304 Public Hearing and Work Session

Jim Markee, Oregon Collectors Association

HB 2305 Public Hearing and Work Session

Jim Markee, Oregon Collectors Association

HB 2314 Public Hearing and Work Session

Warren Deras, Attorney

Jeannette Holman, Department of State Lands

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 13, A		
004	Chair Ackerman	Calls the meeting to order at 8:33 a.m. and opens a public hearing on HB 2370, which requires State Medical Examiner to issue death certificate within 30 days of receipt of official report from United States Coast Guard of person missing at sea and presumed dead.
<u>HB 2370 – PUBLIC HEARING</u>		
010	Rep. Alan Brown	House District 10. Offers information on difficulties in obtaining death certificates from incidents off the Oregon coast.
029	Michele Longo Eder	Newport, Oregon. Submits testimony and testifies in support of HB 2370 (EXHIBIT A). Details events surrounding loss of individuals at sea in 2001.
052	Eder	Continues with details of search efforts and difficulties in obtaining death certificates to apply for benefits.
126	Eder	Continues by discussing the United States Coast Guard (USCG) form that is required in every marine accident, injury or death. Urges use of the form to allow the State Medical Examiner to issue a death certificate.
163	Ginny Goblirsch	Newport Fishermen's Wives Association. Explains the work of the organization. Emphasizes the need for acceptance of the USCG form for issuance of a death certificate.
197	Chair Ackerman	Sympathizes with all the losses and advises that the committee plans to resolve the issues raised. Points out that information obtained from

the USCG shows that a casualty investigation is to be completed within six months of the casualty.

- 222 Eder Believes the six-month report is the final official report of finding of fact and not the determination of loss of life.
- 228 Chair Ackerman Expresses concern that HB 2370 may not accomplish what is intended. Indicates plans to form a group to work out the problems.
- 233 Rep. Krieger Relates personal experiences with similar situations. Emphasizes that there will be a bill passed. Questions whether this statute needs to be connected to the six-month USCG requirement. Concurs that a work group is needed to work out the wording and wants to participate.
- 260 Rep. Garrard Asks how 30 days was selected.
- 270 Eder Responds that 30 days seems like ample time for review of an official USCG incident report and other substantiation.
- 300 Eder Expresses frustration that the review and final determination is currently taking more than four months.
- 332 Rep. Flores Refers to USCG material provided by FAX from the Medical Examiner's Office (**EXHIBIT B**). Points out requirements in various paragraphs and suggests that there appears to be opportunities to set a timely period for death certificate issuance.
- 372 Chair Ackerman Discusses formation of a work group.
- 377 Rep. Flores Comments that it appears the USCG requirements have been in place for many years and need updating.
- 389 Rep. Brown Requests participation in work group.

TAPE 14, A

- 010 Glenn Chastain Oregon State Police. Expresses concern with language in HB 2370.
- 014 Karen Gunson

State Medical Examiner. Submits testimony and testifies as neutral on HB 2370 (**EXHIBIT C**). Cites ORS 146.045(3)(g) medical examiner death certificate issuance requirements.

- 041 Gunson Raises concerns that HB 2370 requires reliance on only one piece of information and constrains ability to conduct a thorough investigation. Offers to participate in the work group
- 058 Rep. Flores Asks about type of investigation that would be conducted based on information from the USCG of a presumptive death.
- 064 Gunson Responds that HB 2370 requires issuance of a death certificate within 30 days of receipt of USCG information and precludes use of any other information.
- 077 Rep. Garrard Inquires what a reasonable length of time would be to do an investigation.
- 080 Gunson Replies, about 60 days after receipt of all information.
- 086 Rep. Macpherson Asks if it would be reasonable to rely on the ship owner's report rather than USCG report.
- 096 Gunson Concurs that is an excellent idea, plus the USCG can issue a letter that a person is missing and presumed drowned.
- 115 Rep. Flores Asks how many events of this type are handled in a year.
- 119 Gunson Responds, very few, but have a number of other requests for death certificates on bodies that are not recovered.
- 122 Rep. Flores Inquires if marine accidents could be expedited by prioritizing requests.
- 127 Gunson Answers, yes, that would be reasonable.
- 131 Warren Deras Attorney. Testifies about difficulties in administering estates of missing persons. States that under Oregon law there is no way to administer property of a missing person. ORS chapter 117 governs administration of estates of absentees, who must be missing a full

year. Plans to submit proposed language to deal with the broader issue.

- 177 Rep. Macpherson Asks who issues death certificates for out-of-state casualties.
- 184 Deras Responds, the state in which the death occurred and the State Department for overseas deaths.
- 188 Rep. Garrard Asks what determines whether a boating accident occurred in the state.
- 193 Deras Does not know. Continues that in respect to the probate issue, the location of the property determines where administration takes place.
- 203 Rep. Garrard Inquires who has jurisdiction in an accident at sea when an exact area is unknown.
- 209 Deras Comments, has never dealt with the issue.
- 211 Chair Ackerman Announces that Rep. Krieger will head the work group.
- 221 Chair Ackerman States that HB 2370 will not be heard until the work group is ready to report its findings.
- 228 Chair Ackerman Closes the public hearing on HB 2370 and opens a public hearing on HB 2304 and HB 2305.

HB 2304 AND HB 2305 – PUBLIC HEARING

- 233 Sam Sears Counsel. Explains HB 2304, which increases from \$4 to \$7 amount that judgment creditor may recover from judgment debtor for fees paid to attorney to issue writ of garnishment. Describes HB 2305, which allows delivery of writ of garnishment to person designated by sole proprietor to accept service.
- 249 Jim Markee Oregon Collectors Association. Submits testimony and testifies in support of HB 2304 (**EXHIBIT D**). Details writ of execution and writ of garnishment processes.
- 289 Rep. Macpherson Asks how the \$7 figure was determined.

291	Markee	Believes it was established by a committee.
298	Markee	Submits testimony and testifies in support of HB 2305 (EXHIBIT E).
371	Markee	Explains that existing language works well for financial institutions, and the proposed language is for sole proprietors. Advises that language is being developed for partnerships.
385	Rep. Macpherson	Asks how a process server knows a particular individual has been designated.
395	Markee	Responds that financial institutions provide that information, but if a process server doesn't know, the individual is asked if designated.
413	Chair Ackerman	Asks if the amendments mentioned are the -1 amendments to HB 2305.
422	Markee	Replies, wasn't aware the amendments were ready.
446	Chair Ackerman	Indicates possession of the -1 amendments to HB 2305 and requests copies for Mr. Markee and committee members.
455	Chair Ackerman	Closes the public hearing on HB 2304 and opens the work session on HB 2304.

TAPE 13, B

HB 2304 – WORK SESSION

008	Chair Ackerman	MOTION: Moves HB 2304 to the full committee with a DO PASS recommendation, with consideration for the consent calendar.
012	Rep. Garrard	Indicates that a fee increase may raise questions, so asks if HB 2304 can be placed on the consent calendar.
013	Chair Ackerman	Withdraws the consent calendar recommendation.
015		VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

018 Chair Ackerman The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

020 Chair Ackerman Closes the work session on HB 2304 and opens the work session on HB 2305.

HB 2305 – WORK SESSION

031 Chair Ackerman Recesses the work session on HB 2305 and opens a public hearing on HB 2314, which modifies duties of guardians and conservators after death of protected person.

HB 2314 – PUBLIC HEARING

040 Chair Ackerman Recesses the public hearing on HB 2314 and reopens the work session on HB 2305.

HB 2305 – WORK SESSION

044 Chair Ackerman Asks for comments on the -1 amendments to HB 2305 (EXHIBIT F).

053 Jim Markee Oregon Collectors Association. Indicates that the -1 amendments to HB 2305 are acceptable.

060 Markee Explains the -1 amendments to HB 2305 allow deliveries of a writ to a sole proprietor or a partnership to be treated the same.

072 Chair Ackerman MOTION: Moves to ADOPT HB 2305-1 amendments dated 02/01/05.

Chair Ackerman Hearing no objection, declares the motion CARRIED.

078 Rep. Garrard MOTION: Moves HB 2305 AS AMENDED to the full committee with a DO PASS recommendation.

085

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

090

Chair Ackerman

The motion **CARRIES**.

REP. GARRARD will lead discussion in the full committee.

092

Chair Ackerman

Closes the work session on HB 2305 and reopens the public hearing on HB 2314.

HB 2314 – PUBLIC HEARING

094

Warren Deras

Attorney. Submits testimony and testifies in support of HB 2314 **(EXHIBIT G)**. Discusses proposed amendments to HB 2314.

136

Chair Ackerman

Advises that since the amendments have not been drafted by Legislative Counsel, they cannot be considered at this time.

142

Deras

Responds that he plans to follow the proper procedure to request drafting.

145

Chair Ackerman

Explains that the merits of HB 2314 only can be discussed.

151

Deras

Advises that proposed amendments are to clarify HB 2314 and do not make substantive changes. Discusses conservatorship proceedings and management of decedents' estates.

193

Deras

Continues with explanation of problems representing the Department of State Lands (DSL) and cites some specific examples.

250

Deras

Indicates that one objective of HB 2314 is to assure that notice is provided to appropriate parties on requests for fees.

307

Deras

Discusses activities of independent heir searchers.

354

Deras

Points out existing 48-hour notice to DSL is unrealistic.

370

Deras

Explains that HB 2314 makes significant changes regarding unpaid protective proceeding expenses.

TAPE 14, B

004	Deras	Continues by explaining conservator rights, responsibilities and authority to expend funds as necessary to protect the assets.
038	Deras	Points out conflicts between ORS 125.530 and ORS 112.810.
050	Deras	Explains that new provisions in HB 2314 require the conservator to give notice to parties interested in the estate.
058	Rep. Flores	Comments that it is a requirement in a conservatorship proceeding, to file a notice of death of the one being protected, to terminate the conservatorship.
063	Deras	Responds that statute says only that a final account must be filed in 30 days.
068	Rep. Flores	Comments that to terminate a conservatorship, notice must be provided to the court.
070	Deras	Replies that a final account must be filed.
071	Rep. Flores	Inquires if the intent of HB 2314 is to clarify statute.
080	Deras	Responds, trying to make the procedures specific. Explains that notices are not being given in the conservatorship process.
098	Rep. Flores	Expresses that she thought there was a provision that notice was required.
103	Deras	Replies, in probate but not conservatorship.
108	Jeannette Holman	Assistant Director, Department of State Lands (DSL). Submits testimony and testifies in support of HB 2314 (EXHIBIT H).

Comments that failure to provide notice has cost heirs, and in some cases, the state substantial amounts of money. Explains the agency's responsibility to locate heirs.

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| 135 | Rep. Garrard | Asks where the estate goes if not to DSL. |
| 137 | Holman | Responds, sometimes the attorney. |
| 144 | Rep. Garrard | Inquires what happens to the estate if there are no heirs and DSL is not notified. |
| 147 | Deras | Replies, it lies foul. Explains that the true function of the probate process is to make sure property is distributed properly. |
| 170 | Rep. Garrard | Asks if anyone can petition to obtain abandoned property. |
| 175 | Deras | Indicates that the probate process has a priority for who can petition to open a probate. |
| 183 | Chair Ackerman | Asks if a creditor can petition to open a probate. |
| 184 | Deras | Answers, yes. |
| 187 | Rep. Macpherson | Asks if the some of the problems described would be alleviated if the law of intestate succession was changed so the DSL would get the property instead of distant relatives in cases of no will. |
| 195 | Deras | Replies that currently heirship extends to descendants of grandparents; however, that is a separate problem. Explains further that heirship is supposed to be the state's effort to identify what the decedent would have outlined in a will. |
| 247 | Rep. Macpherson | Comments that there is an incentive for an industry that seeks out distant relatives who had no family connection, over the state, which may have provided substantial assistance. |
| 262 | Chair Ackerman | Closes the public hearing on HB 2314. |
| 266 | Chair Ackerman | Suggests the proponent submit amendments to HB 2314 on the Senate side for expediency. |

272 Chair Ackerman Opens a work session on HB 2314.

HB 2314 – WORK SESSION

275 Rep. Flores **MOTION: Moves HB 2314 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

289 Chair Ackerman **The motion CARRIES.**

REP. FLORES will lead discussion in the full committee.

293 Chair Ackerman Closes the work session on HB 2314 and adjourns the meeting at 10:16 a.m.

EXHIBIT SUMMARY

- A. **HB 2370, written testimony, Michele Longo Eder, 10 pp**
- B. **HB 2370, written testimony, Karen Gunson, 5 pp**
- C. **HB 2370, written testimony, Karen Gunson, 2 pp**
- D. **HB 2304, written testimony, Jim Markee, 1 p**
- E. **HB 2305, written testimony, Jim Markee, 1 p**
- F. **HB 2305, -1 amendments, Rep. Ackerman, 2 pp**
- G. **HB 2314, written testimony, Warren Deras, 18 pp**
- H. **HB 2314, written testimony, Jeannette Holman, 2 pp**

The following material is submitted for the record without public testimony:

- I. **HB 2305, written testimony, Aaron Crowe, 1 p**